

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-090

April 30, 1998

TELEPHONE ASSOCIATION OF MAINE
Introduction of IntraLATA
Presubscription in the Independent
Telephone Companies Service Area

ORDER

WELCH, Chairman; NUGENT and HUNT, Commissioners

I. INTRODUCTION

In this Order we approve, with certain modifications, the Telephone Association of Maine's plan to implement IntraLATA Presubscription in the Independent telephone companies' service territories. By approving TAM's Plan we have taken another step to enhance the competitive conditions in Maine's telecommunications market.

On January 30, 1998, the Telephone Association of Maine ("TAM") filed a proposed implementation plan for the introduction of IntraLATA Presubscription ("ILP") on behalf of the independent telephone companies of Maine ("Independents")¹. According to TAM, the plan is modeled substantially on the NYNEX ILP plan approved by the Commission in *New England Telephone and Telegraph d/b/a NYNEX, Implementation Plan for the Introduction of IntraLATA Presubscription, (ILP)*, Docket No. 97-204, Order Approving Stipulation (Me. P.U.C. May 30, 1997). TAM noted that at the time of the filing of its ILP plan it was unsure whether all of its members concurred with the proposed plan.

To address ILP implementation issues raised by TAM's general proposal, case conferences were held on February 24, 1998 and March 20, 1998. On March 20, 1998, Mid-Maine Telecom ("Mid-Maine") filed a separate application for the implementation of ILP which, according to Mid-Maine, was very similar to the generic plan submitted by TAM.²

¹A list of the participating Independent telephone companies is set forth on Appendix One, attached.

²Although Mid-Maine's application was separately docketed, the issues presented by Mid-Maine's application are identical to the issues presented in this case. Therefore, pursuant to M.R.Civ.P. 42, we will consolidate Mid-Maine's application into Docket No. 98-090.

Based on the information presented at the case conferences, the Independents' responses to the Examiners' Data Requests and the written submissions of the parties, we find that as a general matter, the implementation plan proposed by TAM is a reasonable one. We note below our particular areas of concern with the TAM Plan and the modifications which we will require. Unless otherwise noted, TAM's Plan as submitted is approved.

II. IMPLEMENTATION TIME FRAME

While the IntraLATA toll market in Maine has been nominally competitive for quite some time, until September, 1997, customers in Maine could only access competitive inter-exchange carriers by dialing the carrier identification code (CIC or access code) prior to dialing the number being called. In Bell Atlantic's territory, all other toll calls were pre-subscribed to Bell Atlantic. In the Independents' territories such calls were handled jointly by Bell Atlantic and the Independents.

ILP allows customers to use carriers other than Bell Atlantic or Bell Atlantic/Independents to handle their in-state toll calls without first having to dial a carrier access code. In *New England Telephone & Telegraph Company d/b/a NYNEX, Implementation Plan for the Introduction of IntraLATA Presubscription (ILP)*, we approved a stipulation to implement ILP in Bell Atlantic's³ service territory. In our Order in Docket No. 97-204, we concluded that by creating toll dialing parity, ILP eliminated a significant barrier to competition in Maine's in-state long distance market. That Order, however, specifically recognized that the stipulation applied only to Bell Atlantic and did not bind the Independents.

Given the critical role that ILP will play in opening up the IntraLATA toll market to competition, we find that the provision of ILP by local exchange companies (LECs) can no longer be viewed as optional but is now a part of such utilities' provision of reasonable and adequate service. We thus conclude that ILP must be implemented by the Independents as soon as reasonably practicable.

The generic TAM Plan did not propose a specific date for ILP implementation by the Independents. During the case conference, the Advisory Staff stated their preference to have ILP implemented state-wide by July 1, 1998. Most of the Independents have indicated that they could comply with such a deadline. Several, however, requested that they not be required to

³Docket No. 97-204 was commenced prior to the consummation of the Bell Atlantic/NYNEX merger. To avoid confusion, we will refer to New England Telephone and Telegraph Company as Bell Atlantic throughout this Order.

implement ILP until September, 1998. These companies were asked to explain, specifically, why they could not implement ILP by July 1. We received responses to this request from Community Services Telephone, China Telephone Company, Standish Telephone Company, Maine Telephone Company, Lincolnville Telephone Company, Tidewater Telecom and Saco River Telephone Company. We do not believe any of these companies has made a compelling case for delaying implementation of ILP. However, since this case has taken slightly longer to conclude than anticipated, and since several of the Independents who were not requesting additional time planned on implementing ILP at various times during the month of July, we establish August 1, 1998 as the statewide deadline for ILP implementation by the Independents.

III. DEFAULT CARRIER

One of the significant areas of difference between the Bell Atlantic Plan and TAM's proposal concerns the issue of who should be the "default" carrier if a customer has not made a specific presubscription selection. In its plan, Bell Atlantic proposed that it be designated as the default carrier. This proposal, which was incorporated in the stipulation which was submitted to us, was challenged by AT&T which proposed a system of random allocation. In our Order Approving Stipulation, we concluded that Bell Atlantic's proposal to name itself as the default carrier was reasonable in order to avoid customer confusion and resentment from customers reacting to a choice being made for them.

The TAM plan provides that an existing customer who does not select an alternate carrier will receive service from one of the following (decided by each Independent at the Independent's option):

- 1) The LEC itself, if the LEC has chosen to continue to offer IntraLATA toll service after ILP implementation;⁴
- 2) Another IntraLATA IXC, if the LEC has chosen to designate another IntraLATA IXC as the "designated carrier" for the LEC's service area at the time of ILP implementation;⁵ or
- 3) The traditional IntraLATA toll service jointly provided among noncompeting LECs in Maine, doing business as "LEC Toll" or the like.

⁴Option One is also referred to as the Originating Responsibility Plan or "ORP."

⁵Option Two is also referred to as the Designated Carrier Plan or "DCP."

TAM's proposal did not indicate which option each Independent would choose. Of the 21 Independents participating in this case, five have since stated they wished to proceed under Option One, one stated that it would proceed (under Option Two) using Bell Atlantic as the carrier, and the remainder wished to provide service under Option Three. (The company by company breakdown is provided in Appendix Two attached.)

To address the "default carrier" issue in this case and decide on the reasonableness of the options presented by TAM, it is necessary to review and understand on how toll service is currently provided to customers in the Independents' territories. Until December, 1997, Bell Atlantic and the Independents have arranged for the provision of toll service to customers in the Independents' service territories through a series of individual toll "settlement agreements." Under the provisions of these agreements, the Independents connected their local networks to Bell's interexchange (interoffice) toll network and remitted their toll billing to Bell, and in return, Bell reimbursed each Independent for its toll related investments and expenses either on a cost or an average schedule basis. In May, 1997, Bell Atlantic notified all Independents that it was terminating all settlement agreements as of December 31, 1997, and instead such agreements would be replaced by access arrangements. Rather than challenge those Independents who chose Option One and designated themselves as default toll carriers, Bell Atlantic indicated at the March 10, 1998, technical conference that it planned to discontinue service in those areas where Independents have chosen Option One. Bell Atlantic's statements raise the question of what carrier, in the absence of a competitive intrastate toll market, has the obligation to provide IntraLATA toll service to customers currently receiving local exchange service from an Independent. The parties were requested to submit briefs on the issue by March 31, 1998.

In its brief, Bell Atlantic argued that while it was authorized to serve the entire state in its charter, it was under no obligation to do so and that it has not, in fact, been providing toll service to the customers in the Independents' territories. The Independents did not file a brief on the issue but commented that the toll carrier of last resort issue was a complicated one and should be severed from this proceeding. In the meantime, TAM argued that the Commission should issue an order to implement ILP to those companies which have decided to proceed with the Designated Carrier Plan (Option Two).

The issues related to carrier of last resort are complex. Ultimately, the question may be irrelevant if a competitive market develops for IntraLata toll service in the Independents'

territories. Bell Atlantic's pronouncement in this case that it plans to discontinue toll service to any area where an Independent wishes to provide toll service, however, causes us some concern that a competitive toll market might not develop in the near-term in the Independents' service areas. Therefore, protections must be provided to ratepayers should this occur.

We agree with TAM, however, that ILP can be implemented without finally resolving the carrier of last resort issue here. It is our understanding that Bell Atlantic will continue to provide transport services on its toll network to the Independents at just and reasonable rates and that the Independents will continue to offer toll service to its customers either independently (Option One) or in combination with Bell Atlantic (Option Three) at Bell Atlantic's currently tariffed rates.⁶ With these understandings, we will approve the requests of Saco River, Pine Tree, Oxford West, Oxford County and Bryant Pond to be default toll carriers when ILP commences in their respective territories. We will initiate a separate investigation, to be concluded before the actual implementation of ILP by the Independents, to address whether, pursuant to the requirements of 35-A M.R.S.A. § 1104, Bell Atlantic can refuse to serve a toll customer in the Independents' territories absent Commission approval.

IV. MUNICIPAL CALLING

In Docket No. 97-204, we noted that one of the most difficult issues which arises from the implementation of ILP is handling of Municipal Calling Service (MCS). MCS allows customers to call any telephone number within their municipality, toll-free, even if the party called is served by a different exchange. As we noted in our Order in Docket No. 97-204, "local MSC" calls (where the exchange called is within the customers local calling area) will continue to be handled by the local exchange company, in this case the Independent. The difficulty lies with toll MCS calls which are handled over the toll network and which then must be recognized as municipal calls by the toll carrier and stripped from the calling customer's bill. The Bell Atlantic ILP Stipulation provided:

It will be the IntraLATA carrier's
responsibility to recognize these calls as
MCS eligible calls, unless the Commission no
longer wants to maintain MCS as a viable

⁶We have not, as part of this Order, placed a specific rate increase stayout period on the Option One Independents. Obviously, any attempt to raise rates immediately by these companies will be carefully reviewed and must be fully justified under 35-A M.R.S.A. §§307 and 310.

service. While NYNEX will continue to provide MCS to its IntraLATA toll customers, NYNEX will no longer be able to provide MCS to customers who have presubscribed to another carrier."

The TAM Plan essentially follows the approach taken in the NYNEX Stipulation with certain accommodations made for the default carrier options presented by TAM and discussed *infra*. We approve TAM's proposal with the following clarifications.

First, in the NYNEX Order we noted that customers of who switch carriers could still receive MCS from their existing carrier or carriers by dialing the carrier's access code. This option should still be available to customers in the Independents' territories. Second, to the extent Bell Atlantic continues to serve customers in areas where the Independents have decided to offer toll service (Option One discussed above), customers should be able to continue to receive MCS as currently provided from either Bell Atlantic or the Independent.

V. CUSTOMER NOTIFICATION

As part of its ILP proposal, TAM submitted proposed customer education materials (bill insert and toll free message) to be utilized as part of the conversion to ILP. The Plan called for the bill insert to be sent to customers at least ten days prior to ILP implementation and again within 90 days of initial implementation. Overall, the texts of the proposed materials appear reasonable. We have suggested certain modifications be incorporated into the proposed materials. Copies of the education materials with our recommended changes are attached hereto as Appendix Three.

The proposal to begin the customer education campaign only ten days prior to implementation of ILP will not provide customers adequate notice of this significant change in their service prior to implementation. We, therefore, conclude that the bill inserts should be mailed and the toll free message should commence at least 30 days prior to implementation.

VI. COST RECOVERY

In its ILP plan, TAM proposed to recover costs associated with ILP implementation over a 2-year time period through a per-minute of originating access minute of use charge referred to as the Equal Access Cost Recovery Charge. Each of the Independents has submitted estimates of its expected ILP costs. We find the categories of costs included for recovery in the recovery mechanism proposed to be reasonable. Similar to the

approved Bell Atlantic Plan, cost recovery will be trued up based on actual costs and revenues shortly after the first and second anniversaries of ILP implementation. As part of this process, the reasonableness of the actual costs incurred may also be reviewed.

VII. CONCLUSION AND RECOMMENDATIONS

Based on the above findings, we conclude that TAM's Plan for the implementation of ILP is, on an overall basis, reasonable and with the clarifications and modifications noted herein, approve the Plan for ILP implementation by the Independents which shall commence in accordance with the terms of this Order, no later than August 1, 1998.

Dated at Augusta, Maine this 30th day of April, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Hunt

This Document has been designated for publication
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5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice

of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

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